IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2007

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THE HONOURABLE MR.JUSTICE S.MANIKUMAR

C.M.A.No.300 0F 2001

1. Sakunthala
2. M.Das
3. M.Mekala ... Appellants

vs.

1. R.Gopal
2. United India Insurance Co. Ltd.,
   48, General Muthiah Mudali Street,
   Chennai - 79. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated, 24.03.2000 made in M.A.C.T.O.P.No.481 of 1988 on the file of Motor Accidents Claims Tribunal (Principal Sub Judge), Chengalpattu.

For Appellants : Mr.Aru Sillambayiram
For Respondents : Mr.A.Thayaparan, for R2
For Respondent 1 : No Appearance

J U D G M E N T

Appellants/petitioners 3 to 5 are the legal representatives of the deceased first petitioner. They have preferred this appeal for enhancement of compensation against the judgment and decree dated, 24.03.2000 made in M.A.C.T.O.P.No.481 of 1988 on the file of Motor Accidents Claims Tribunal (Principal Sub Judge), Chengalpattu.

2. On 02.08.1988, at 5.45 p.m., when the deceased first petitioner was walking along G.N.T. Road, Sengundram, near Adityan Stores, a lorry bearing Registration No.TDH.8199 driven by its driver from north to south, rashly and negligently, hit the deceased first petitioner, as a result of which, he sustained grievous injuries all over the body. He claimed Rs.90,000/- as compensation.

3. The second respondent Insurance Company denied the manner of accident and contended that the owner of the vehicle, the first respondent herein, has not furnished necessary particulars, such as Registration Certificate, driving license, etc. The age, avocation, income, nature of injuries sustained by the deceased first petitioner and the treatment undergone by him were disputed.

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4. During the pendency of the claim petition, the deceased first petitioner died on 04.12.1994 and his legal representatives were brought on record. They contended that the death occurred only due to the injuries sustained in the accident and therefore, they are entitled to prosecute the appeal and claim compensation. Their amendment petition for enhancement of compensation has been ordered.

5. Mrs.Chinnaponnu, wife of the deceased first petitioner was examined as P.W.2. She has deposed that on 02.08.1988, at 5.45 p.m., when her husband was walking on the left side of Sengundram road, the lorry owned by the first respondent herein came from behind in a rash and negligent manner, hit the deceased first petitioner and he sustained severe injuries in his right shoulder and left leg. First Information Report was registered on the same day at 6.30 p.m. The owner of the lorry, first respondent herein, refuted the allegations made in the claim petition.

6. It was the contention of appellants/petitioners 3 to 5, that the deceased first petitioner was working as a Fireman in Airport, earning Rs.2,000/- per month. He sustained injuries in the left cheek, left leg and lacerated wound in the fourth finger in his hand. The deceased first petitioner was treated as inpatient in Stanley Government Hospital, Chennai, from 02.08.1988 to 06.08.1988. Subsequently, he was treated as inpatient in Sushruth Clinic, Avadi, from 07.08.1988 to 10.11.1988. Again, he was treated as inpatient in Stanley Government Hospital, Chennai, from 02.01.1989 to 30.10.1991. Thereafter, he was treated in K.M.C. Hospital from 01.07.1992 to 13.08.1992. The deceased first petitioner has also undergone continuous treatment in Evan Stetford Hospital, Ambattur. Again, he was an inpatient in K.M.C. Hospital, Chennai from 15.06.1994 to 24.09.1994. From 11.10.1994 to 18.11.1994, he was again treated as inpatient in Stanley Government Hospital, Chennai. Thereafter, he was inpatient in I.A.F. Hospital from 26.11.1994 till 30.11.1994.

7. On the strength of various records relating to medical treatment from the year 1988 and in particular, Ex.P19-Medical Certificate issued by P.W.3, Doctor, the legal representatives of the deceased first petitioner contended that the death of the first petitioner was only due to the injuries sustained in the accident and hence, claimed compensation.

8. On the side of appellants/petitioners 3 to 5, P.Ws.1 to 3 were examined and Exs.P1 to P19 were marked. On behalf of respondents, no oral evidence was let in and no document was marked.

9. The Tribunal on consideration of the entire materials on record dismissed the claim made by appellants/petitioners 3 to 5, on the grounds that there was no substantial proof to conclude that the first petitioner died only due to the injuries sustained in the accident. As regards negligence, in the absence of any rebuttal evidence, the driver of the lorry was held responsible for the accident. Inasmuch as the

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legal representatives are not entitled to claim compensation for the personal injuries sustained by the deceased for the loss of estate, the Tribunal awarded Rs.15,000/- as compensation to his legal representatives.

10. P.W.3, Doctor, who claimed to have examined the deceased first petitioner on 02.12.1994 has deposed that the left lower limb was grossly swollen with the signs of "Deep vein thrombosis" and that he had advised the deceased to get treated in the hospital, where vascular surgery is feasible. He has further deposed that the cause of his death was due to deep vein thrombosis. The Tribunal considered the oral testimony of P.W.3, Doctor and on perusal of the entire medical records, rejected the claim of the legal heirs of the deceased first petitioner, on the following grounds :

(i) that the post-mortem report has not been marked
(ii) that the deceased first petitioner was suffering from diabetes mellitus and that he was aged 59 years at the time of his death and therefore, the death could have been due to old age.
(iii) P.W.3, Doctor has deposed that he had treated the deceased first petitioner, six years ago and that he had not maintained any records.
(iv) P.W.3, Doctor has deposed that he had examined the deceased first petitioner on 02.12.1994 and after 2 days, the first petitioner died.
(v) that the evidence of P.W.3, Doctor cannot be accepted as a trust-worthy evidence and that there is no emphasis in the evidence of P.W.3, Doctor, that the first petitioner died only due to the injuries sustained in the accident. The contents of Ex.P19-Medical Certificate and the evidence of P.W.3 are not acceptable, to conclude that the first petitioner died as a result of the injuries.

11. Heard Mr.Aru Silambayiram, learned Counsel appearing for appellants and Mr.A.Thayaparan, learned Counsel appearing for the second respondent.

12. Learned Counsel for appellants/petitioners 3 to 5 has raised a preliminary issue that the Tribunal has failed to frame a proper issue as to whether the deceased first petitioner died as a result of the injuries sustained in the accident, during the pendency of the claim petition.

Learned Counsel for appellants/petitioners 3 to 5 further submitted that there is sufficient evidence to conclude that there was nexus between the injury and the death of the first petitioner, which is supported by the evidence of P.W.3, Doctor. He further contended that the reasons assigned by the Tribunal for rejecting the evidence of P.W.3, namely, Doctor is not proper and in the absence of any contrary evidence, the Tribunal ought to have allowed the claim petition on the basis of available evidence. He submitted that the cause of death is only due to the injuries sustained in the accident and therefore, his

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legal representatives are entitled to just compensation. In support of his contention, learned Counsel placed reliance on various decisions. The applicability of the decisions cited by the learned Counsel for appellants is dealt with.

(i) In a decision reported in 1975 ACJ 215 (Govind Singh and others vs. A.S.Kailasam and another), the deceased sustained injury in a motor accident that occurred on 04.06.1967. She had developed tetanus, despite receiving medical attention in the Government Hospital and succumbed to injuries on 22.06.1967. The evidence produced before the Court prove that there were 7 injuries and therefore, it was concluded that tetanus infection could have been caused by the supervening injuries. In that context, the Court held that the death could have been caused only due to tetanus and that the infection would have been caused by one of the supervening injuries. In the reported case, it was evident from Exs.P3 and P4-Out-patient chits and Ex.P8-case sheet that the deceased complained of symptoms of lock-jaw, which is attributable only to tetanus. On an analysis of the entire evidence produced before the Court, it was concluded that there was no necessity to conduct post-mortem.

(ii) In a decision reported in 2005 ACJ 433 (Vidhyawati and another vs. A. Guruswamy and another), a pedestrian was hit by a taxi and sustained injuries including the fracture of right leg. The injured was continuously treated and died after five months due to pneumonia. The medical evidence proved that the injury was one of the reasons for his death and there was no rebuttal evidence. Therefore, the Tribunal allowed compensation on the ground that death would have occurred due to pneumonia and renal failure.

In the above case, the accident had occurred on 03.09.1997. The injured was treated in a hospital, but he was 'kept in follow-up'. His condition became serious and he was again admitted in the hospital on 02.01.1998 and was discharged on 16.01.1998. Again, he was brought to the hospital on 16.01.1998 and he died on 29.01.1998. Since there was proximity to the injury and the death, the Tribunal awarded compensation.

(iii) In a decision reported in 1986 ACJ 55 (Kumar Mohamed Rafique (since deceased) by his heirs vs. Municipal Corporation of Greater Bombay), a 11 year old boy sustained head injuries in 1972 and became semi-conscious. An artificial device was inserted. Infection in the brain caused paralysis of the left side and deterioration in general condition of the injured. There was evidence to show that he was continuously treated for the head injury; In spite of medical attention, he died in 1980.

In this case, the Court had the opinion of three medical men, and one among them was a surgeon, who had operated the deceased. The Doctor had deposed that the patient was forced to have recourse to the artificial device, because of the accident and life of the device could not be guaranteed. Since, the failure of the said artificial device had

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resulted in the death of the injured, the Court had no difficulty in holding that the injury caused due to the accident was the cause of his death, notwithstanding the fact that seven years had elapsed after the shunt was inserted and before the patient succumbed. Compensation was awarded, because the patient was provided with the artificial device, immediately after the accident and that due to the failure of the said artificial device after seven years, the patient succumbed to injuries.

(iv) In yet another decision reported in 1987 ACJ 224 (New India Assurance Co. Ltd., and others vs. Shakuntla Bai and others), a tempo van ran over an old man on 03.05.1980 and he sustained compound fracture of pelvis bone and filed an application under Section 110-A on 31.10.1980 and died on 17.01.1981. It was held by the Court that the legal representatives of the deceased could pursue the action initiated by the injured and they are entitled to be compensated for the loss of dependency. As the injured died after 8 months of the accident, due to the injuries he suffered in the accident, as no immediate cause other than injuries had been proved and therefore, the Court was pleased to award compensation.

(v) In a decision reported in 2005 (4) SCC 370 (Iqbal Singh Marwah and another vs. Meenakshi Marwah and another), the Apex Court has held that there is distinction in the standard of proof in Civil as well as Criminal proceedings. The findings given in one proceeding is not binding on the other. Civil cases are decided on the basis of preponderance of evidence, while in a Criminal case, the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. The decision relates to the power of the Magistrate to take cognizance under Section 195 (1) (b) Cr.P.C., where certain procedure is contemplated under the said Section. It was held that the Magistrate Court has no powers to take cognizance of the evidence enumerated under Section 195 (1) (b) Cr.P.C. But, they ought to follow the procedure under Sections 340, 341 and 343(2) Cr.P.C. The said decision is not applicable to the facts of the present case.

(vi) In a decision reported in 1992 ACJ 110 (Usha Jhingran and others vs. Budhsen and others), the claimants contended that the deceased died due to the accident, but did not produce any medical or other expert evidence to infer that death was the direct consequence of injuries received by the deceased in the accident. The injured remained unconscious in the hospital for about a year after the accident and died, thereafter. The decision of the Tribunal dismissing the claim petition was reversed by the High Court and compensation was awarded.

In the above referred case, it is evident that the deceased was unconscious for one year due to the injury and therefore, there is no reason as to why the evidence tendered by the claimants should be rejected. Therefore, the High Court was pleased to award compensation.

(vii) In a decision reported in 1995 ACJ 980 (Union of India and another vs. Saraswathi Debnath and others), the High Court was pleased to consider as to how the evidence tendered before the Claims

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Tribunal has to be appreciated. In this case, the High Court was pleased to hold as follows :

> "6. The law is well settled that in a claim under the Motor Vehicles Act, the evidence should not be scrutinised in a manner as is done in a civil suit or a criminal case. In a civil case the rule is preponderance of probability and in a criminal case the rule is proof beyond reasonable doubt. It is not necessary to consider these niceties in a matter of accident claim case inasmuch as it is summary enquiry. If there is some evidence to arrive at the finding that itself is sufficient. No nicety, doubt or suspicion should weigh with the Claims Tribunal in deciding a motor accident claim case. The law on this is laid down by the Supreme Court in N.K.V. Bros. (P) Ltd., vs. M.Karumai Ammal, 1980 ACJ 435 (SC).

(viii) In yet another decision reported in 1998 ACJ 513 (Shankarayya and another vs. United India Insurance Co. Ltd. and another), this Court in paragraph 4 has held as follows :

> "It clearly shows that the insurance company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in the section are found to be satisfied and for that purpose the insurance company has to obtain order in writing from the Tribunal which should be a reasoned order by the Tribunal. Unless that procedure is followed, the insurance company cannot have a wider defence on merits than what is available to it by way of statutory defence. It is true that the claimants themselves had joined respondent No.1, insurance company in the claim petition but that was done with a view to thrust the statutory liability on the insurance company on account of the contract of insurance. That was not an order of the court itself permitting the insurance company which was impleaded to avail of a larger defence on merits on being satisfied with the aforesaid two conditions mentioned in section 170. Consequently, it must be held that on the facts of the present case, the respondent No.1, insurance company was not entitled to file an appeal on merits of the claim which was awarded by the Tribunal.

(ix) In a decision reported in 1993 ACJ 46 (Anil Kumar Jain vs. General Manager, Punjab Roadways, Chandigarh and others), the Court considered as to whether the evidence of a senior Doctor on the question of disability can be relied on without examining the Doctor.

In the above case, the evidence tendered by the Doctor was sought to be rejected on the ground that he was a Junior Resident of the Department. There was no suggestion that the opinion was not based on the record and that there was no rebuttal evidence by the respondents in summoning the Doctor of a higher status. Therefore, the High Court accepted the opinion of the Senior Doctor and awarded compensation.

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(x) In a decision reported in 1989 ACJ 448 (United India Insurance Co. Ltd., vs. Katukuri Raghavareddy and others), it is held that a Claims Tribunal is a Court, subject to the revisional jurisdiction of the High Court and that therefore the Tribunal ought to have framed specific issue as to whether the death of the claimant is due to the injury sustained in the accident. This decision is supported by the judgment reported in AIR 1983 Allahabad 450 (Smt. Kaniz Fatima (deceased) and another vs. Shah Naim Ashraf).

(xi)In yet another decision reported in 1999 ACJ 287 (Klaus Mittelbachert and others vs. East India Hotels Ltd. and others), the accident occurred while the guest was diving in the swimming pool, thereby he sustained head injury and he died later on. There was evidence to show that the guest sustained head injuries and that he was continuously treated from day one of the accident till his death. In this case, the Supreme Court concluded that the injury in the head was the cause of death.

13. In the case on hand, the accident had occurred on 02.08.1988.

(i) As per Ex.P4-Discharge Summary issued by Government Stanley Hospital, Chennai, the following injuries have been noticed.

(i) Laceration over left cheek 3 cm x 2 cm x ½ cm
(ii) Laceration left leg 6 cm x 4 cm
(iii) Laceration 4th toe 3 cm x 2 cm
(iv) Laceration all over body

(ii) It is evident from Ex.P5 that the deceased first petitioner was treated as inpatient in Sushruth Clinic, between 07.08.1988 and 10.11.1988. In this document, the Doctor has noticed that the injured first petitioner sustained extensive laceration of the left leg.

(iii) Ex.P6 is the Certificate issued by Government Stanley Hospital, which reveals that there was ulcer in the toes and it was not healed. On 15.10.1989, skin grafting was done.

(iv) It is seen from Ex.P7 that the deceased first petitioner was treated in Kilpauk Medical College Hospital, Chennai, again from 01.07.1992 to 13.08.1992. The diagnosis of the Civil Assistant Surgeon was chronic ulcer in left foot and he was asked to review after three months.

(v) Ex.P8 series is Out-patient cards of Sir Ivanstede Fort Hospital, Ambattur, Chennai, from 11.09.1992 to 20.11.1993, which reveal that the patient was suffering from ulcer, referred from IAF, Avadi for treatment. In the Out-patient card, dated 14.02.1993, it is mentioned as follows :

" Chronic ulcer (old RTA left foot injury treated) (left foot).
Patient referred to K.M.C. Hospital - plastic surgery and
Vascular Surgery to rule out. Varicose ulcer.
Refer to Vascular Surgery Department."

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(vi) Ex.P9 is Medical Follow up record from 15.06.1994 to 24.09.1994 issued by K.M.C. Hospital, Chennai - 10, in which, it is mentioned as follows :

> "An old case of RTA treated in this hospital for injury left foot and for SSG and crush injury left foot. C/o Pain and infection of S.S.G. on sole of left foot."

(vii)Ex.P10 is the Discharge Summary, dated 18.11.1994, issued by Government Stanley Hospital, Chennai, in which it is mentioned for the first time that the deceased first petitioner was treated for traumatic ulcer marked with SSG and acute thrombosis from 11.10.1994 to 18.11.1994.

(viii)Ex.P11 is the document, which shows that the deceased first petitioner on reference from Air Force Avadi Hospital, was treated as inpatient in Stetford Hospital, Ambattur from 26.11.1994 to 30.11.1994 for treatment for chronic ulcer.

(ix) Ex.P19 is the Medical Certificate issued by P.W.3, Doctor, who has stated that the cause of death of the first petitioner was due to deep vein thrombosis. On the basis of this particular document, learned Counsel for appellants strenuously contended that there is an expert opinion by the Doctor, who has examined the deceased first petitioner on 02.12.1994 and in the absence of any rebuttal evidence, it should be concluded that the death has occurred only as a result of the injuries and therefore, the appellants are entitled to compensation.

Ex.P19-Medical Certificate has been issued on 10.10.1999 after five years, from the date of death of the deceased first petitioner, i.e. on 04.12.1994. It is stated by the Doctor that the deceased was examined on 02.12.1994 and that he had given his medical advice to get hospitalised, where vascular surgery is feasible.

14. During cross-examination, P.W.3, Doctor has deposed that he has not maintained any records relating to the deceased first petitioner. It is evident from Ex.P19-Medical Certificate, dated 10.10.1999 that no tests have been conducted by the said Doctor to conclude that the deceased had deep vein thrombosis. This crucial document does not indicate as to whether there was any opinion from any Vascular Surgeon or from the particular department, suggesting that there was deep vein thrombosis. In the absence of any specific test reports and medical records, it is not known as to how a Doctor could conclude that the death was only due to deep vein thrombosis.

If the deceased first petitioner had developed thrombosis due to the injury, medical records right from the year 1988 till 1994 would have reflected that the deceased had developed thrombosis. All the records produced by the legal representatives of the deceased first petitioner show that there was chronic ulcer and that the deceased was treated in various hospitals. No records have been produced by the

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appellants for a period of three years from 15.10.1989 to show that the deceased first petitioner was treated for the injury. None of the Doctors, who treated the deceased has given a categorical diagnosis that the deceased first petitioner had developed thrombosis in the foot, excepting Ex.P10-Discharge Summary, dated 18.11.1994. P.W.3, Doctor has deposed that he examined the deceased first petitioner on 02.12.1994, just about two days before his death and his Certificate, Ex.P19 has been issued after five years, i.e. on 10.10.1999.

15. Learned Counsel for the second respondent Insurance Company, placing reliance on a decision reported in 1998 ACJ 601 (V.Mepherson and another vs. Shiv Charan Singh and others) submitted that the death of the first petitioner is not connected with the injury and that therefore the legal representatives of the deceased first petitioner are not entitled to compensation. Further, he submitted that the legal representatives can always continue the proceedings for the loss of estate, for which, the Tribunal has awarded compensation.

Learned Counsel for the second respondent further submitted that in the absence of medical records connecting the injury with the death of the first petitioner, the decision of the Tribunal is well considered and it does not require any interference.

16. Some of the decisions cited by the learned Counsel for appellants relating to the procedures to be followed by the Tribunal, the nature of evidence which is required for the purpose of concluding negligence on the part of the deceased are general principles of law and they are accepted. In the other cases cited by the learned Counsel for the appellant, there was a clear nexus between the injury and the consequential death.

Certificate issued by a Doctor should be based on medical records. There must be proximity with the injury and the death. There should be direct relation with the injuries and the consequential death. Claimants have to prove that the death has occurred due to the injuries by clear and cogent evidence. The cause of death should not be remote and unconnected one with the injury sustained in the accident. It should be a forseable one and should not be an uncommon development. If the cause of death is integrally connected with the injury sustained and is one in the chain of causa causans, the cause of death can be attributed to the injury suffered.

17. In the instant case, there is no proximity with the injury and the death of the deceased. There is no direct relation with the injuries and the consequential death. For a period of three years, there is no medical record about the course of treatment. Medical evidence prove that the deceased was not treated for thrombosis, but all along treated only for chronic ulcer. If ever thrombosis was developed due to injuries, there would have been some complications and the Doctors, who had treated him would have certainly noted in any one of the records.

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18. Under these circumstances, I am of the considered view that the Tribunal has properly assessed the evidence and has come to the right conclusion that the death of the deceased first petitioner was not due to the injury sustained in the accident. The other contentions of the learned Counsel for appellants relating to quantum and the method of computing the compensation do not deserve consideration.

In the result, the Civil Miscellaneous Appeal fails and stands dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Motor Accidents Claims Tribunal,
   (Principal Sub Judge)
   Chengalpattu.

2. The Section Officer,
   V.R. Section,
   High Court of Madras,
   Chennai.

1 cc To Mr.Aru Sellambayiram, Advocate, SR.5673.
1 cc To Mr.P.Sukumar, Advocate, SR.5476.

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